

Essay

“Proven” Safety Regulations: Massachusetts 1805 Proving Law As Historical Analogue for Modern Gun Safety Laws

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INTRODUCTION

Concerned by the public health threats posed by certain firearms, the Massachusetts legislature enacts a law to set safety standards for firearms in the Commonwealth.¹ Firearm dealers across the State, including some of the leading manufacturers of the day, not only follow the law’s safety standards, but they themselves also take on the role of public officers enforcing and carrying out the law’s terms. In so doing, Massachusetts carries on a long historical tradition of government and private businesses working together to ensure that the public is protected from dangerous weapons.

This example is not drawn from the headlines of today, but from the historical records of the early nineteenth century. In 1805, Massachusetts enacted a firearm “proving” law, which required that muskets and pistols manufactured in Massachusetts meet certain standards and that they be tested by inspectors, or “provers,” of firearms.² Once these firearms had been tested using the “proving” process, the “prover” would mark the weapon

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1. 1804 Mass. Acts 111, ch. 81.

2. *Id.*

with a stamp, which would show that the firearm had met the State's safety standards.³

Like other historical gun laws, the 1805 Massachusetts law has gained surprisingly modern significance in the wake of the U.S. Supreme Court's decision in *New York State Rifle & Pistol Association, Inc. v. Bruen* (*NYSRPA v. Bruen*).⁴ In *Bruen*, the Court adopted a "text-and-history" approach for evaluating Second Amendment challenges in which the government must affirmatively invoke the historical tradition of firearms regulations to defend modern gun violence prevention measures.⁵ *Bruen* has led historians, scholars, and legal advocates to scour historical records searching for any and all relevantly similar firearms laws from throughout American history.⁶ Some modern courts post-*Bruen* have looked to the 1805 Massachusetts law as a possible historical analogue for several different modern gun violence prevention laws.

This Essay provides additional historical context to the 1805 law, looking at the "how" and the "why" behind the law.⁷ This Essay discusses how the law operated and came to be, and then analyzes why the law was enacted, including why the law included an exception for the Springfield Armory, one of the largest manufacturers of firearms in both Massachusetts and the United States at the time.⁸ The 1805 Massachusetts proving law is an important example of early American governments placing regulations on the commercial sale and manufacture of firearms that serves as a relatively similar analogue to a host of modern gun violence prevention measures, including modern handgun safety standards, serialization requirements, and ghost gun laws.

3. *Id.*

4. *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022).

5. *Id.* at 24.

6. *See generally*, Jacob Charles, *The Dead Hand of a Silent Past: Bruen, Gun Rights, and the Shackles of History*, 73 DUKE L.J. 67 (2023).

7. *Bruen*, 597 U.S. at 29 (identifying the "two metrics" courts should use to determine whether a historical firearms law is "relevantly similar" as "how and why the regulations burden a law-abiding citizen's right to armed self-defense.>").

8. *See infra* Part II.C.

I. FIREARM PROVING AND THE *BRUEN* TEST

A. WHAT IS "PROVING" A FIREARM?

Proving a firearm is a testing process where a weapon is fired using different levels of charges in order to confirm that the weapon will withstand the pressure and wear of a lifetime of firings.⁹ Proving is "commonly conducted in two stages": the "provisional proof" stage and the "definitive proof" stage.¹⁰ For the provisional proof stage, the barrel is tested by itself with a small amount of powder.¹¹ The definitive proof stage occurs "after [the] barrel and action have been assembled and the arm is ready for use," and uses a greater amount of powder in order to stress test the whole firearm together.¹²

When the weapon passes a proving test, it is stamped with a "proof mark."¹³ A "proof mark" may be the initials of the individual inspector or prover who tested the weapon, or it may be the insignia of the "proving house" where the weapon was tested.¹⁴ Sometimes, the firearm will receive two proof marks: one for the provisional proof and the other for the definitive proof.¹⁵

Figure 1: Provisional Proof Marks, Gunmakers' Company, London:¹⁶

On arms of English make.



On arms of foreign make.



Followed by the words
"Not English Make"

9. CLAUDE BLAIR ET AL., POLLARD'S HISTORY OF FIREARMS 473 (1983).

10. Calvin Goddard, *Proof Tests and Proof Marks: I: Small Arms Practice of the British Companies*, 14 ARMY ORDNANCE 140, 140 (1933) [hereinafter *Goddard I*].

11. *Id.*

12. *Id.* See also Philip B. Sharpe, *Thompson Sub-Machine Gun*, 23 AM. INST. CRIM. L. & CRIMINOLOGY 1098, 1103 (1933) (explaining the function of an "action" within a firearm).

13. *Goddard I*, supra note 10, at 140.

14. *Id.*

15. BLAIR ET AL., supra note 9, at 473.

16. *Goddard I*, supra note 10, at 145.

Figure 2: Definitive Proof Marks, Gunmakers' Company, London:¹⁷

On arms of English make.



On arms of foreign make.

Followed by the words
"Not English Make"

Proving and proof marks serve several important purposes. First, the proving process ensures that firearms meet certain safety standards before being sold.¹⁸ This protects not only the user of the firearm, but also the general public from the risks of defective or unsafe products.¹⁹

Second, the proof mark help create a chain of custody for the firearm, as it shows where or by whom the weapon was inspected.²⁰ To this day, collectors and historians rely on proof marks to establish their provenance. Collectors selling antique firearms invoke proof marks to show that the product they are selling is unique.²¹ Museums, including the NRA Museum, highlight proof marks in telling the story of where and how the weapons in their collection were manufactured and sold.²²

17. *Id.*

18. *Id.*

19. BLAIR ET AL., *supra* note 9, at 472–74.

20. See generally *Proof Marks*, NRA MUSEUM, <https://www.nramuseum.org/gun-info-research/proof-marks-from-the-blue-book.aspx> [<https://perma.cc/8KTD-E7LK>] (“[P]roof marks . . . may help you determine where and when your gun was made, including guns where no other marketing are evident.”).

21. *Massachusetts Militia Musket, Perhaps for an Officer, Massachusetts, c. 1827*, BONHAMS CARS (Oct. 5, 2023), <https://cars.bonhams.com/auction/28627/lot/32/massachusetts-militia-musket-perhaps-for-an-officer> [<https://perma.cc/4HAY-VWPR>]; *Lot 218C: Flintlock Pistol*, WILLIS HENRY AUCTIONS, INC. (Nov. 14, 2020), <https://www.willishenryauctions.com/catalogs/antique-firearm-military-artifact-auction-saturday-november-14th-2020/lot-219-two-fascine-knives> [<https://perma.cc/V6DM-6JN2>] (noting Massachusetts proof mark in description).

22. NRA MUSEUM, *supra* note 20; *Pennsylvania Militia Pistol*, NAT'L MUSEUM AM. HIST., https://americanhistory.si.edu/collections/nmah_438591

B. *NYSRPA v. BRUEN*: THE NEW TEST FOR SECOND AMENDMENT CHALLENGES

In *NYSRPA v. Bruen*, the U.S. Supreme Court articulated a new test for evaluating Second Amendment challenges, rejecting a means-end scrutiny that nearly all lower courts had adopted and embracing instead a text-and-history approach.²³ The majority opinion, authored by Justice Clarence Thomas, set forth the test as follows: “When the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.”²⁴

Bruen’s test proceeds in two steps, starting first with text and then proceeding to history. Under the first step, individuals challenging a law must establish that they are part of “the people” to whom the Second Amendment’s protections attach, and that the Second Amendment’s plain text protects the conduct at issue.²⁵ If not, then the Second Amendment does not bar the challenged regulation.²⁶

If the Second Amendment’s plain text applies, then a court proceeds to the second step.²⁷ At the second step, the burden shifts from the party challenging the law to the government to “justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.”²⁸ The government must demonstrate that the law at issue is “relevantly similar” to historical firearms regulations.²⁹

Courts should use “analogical reasoning” and compare “how and why the regulations burden a law-abiding citizen’s right to

[<https://perma.cc/7G3Z-FNLU>] (highlighting name of barrel prover in description and history of the pistol).

23. *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 24 (2022).

24. *Id.*

25. *Id.* at 31–32.

26. *United States v. Jackson*, 661 F. Supp. 3d 392, 399 (D. Md. 2023) (“If [the Second Amendment’s plain text] does not [cover an individual’s conduct], the analysis ends, and the government’s regulation is valid.”).

27. *Id.* (“[I]f the conduct at issue is covered by the [Second] Amendment’s text, the conduct is presumed protected, and the government must then [move onto the second step].”).

28. *Bruen*, 597 U.S. at 24.

29. *Id.* at 29.

armed self-defense.”³⁰ Specifically, the government should “identify a well-established and representative historical analogue,” but, importantly, the government is not required to identify “a historical twin.”³¹ A modern law may have some key differences from its “historical precursors,” and yet “still may be analogous enough to pass constitutional muster.”³²

In the wake of *Bruen*, courts have seen an unprecedented number of Second Amendment challenges to a wide range of gun laws.³³ In deciding these cases, courts have had to take on the unenviable and uncomfortable role of armchair historian, comparing and contrasting modern gun laws with historical analogues offered up by the government to determine whether the challenged laws are sufficiently similar to withstand Second Amendment scrutiny.³⁴

II. HISTORICAL TRADITION OF PROVING LAWS

A. PRE-COLONIAL PROVING LAWS

Proving firearms is a longstanding tradition dating back to the sixteenth and seventeenth centuries and continuing to this day in many countries across the world.³⁵ As early as the sixteenth century, England sought to regulate the firearms industry to ensure the safety and quality of firearms sold and

30. *Id.* at 30.

31. *Id.*

32. *Id.*

33. Charles, *supra* note 6, at 122. See also Billy Clark, *Second Amendment Challenges Following the Supreme Court’s Bruen Decision*, GIFFORDS L. CTR. (June 21, 2023), <https://giffords.org/lawcenter/memo/second-amendment-challenges-following-the-supreme-courts-bruen-decision> [<https://perma.cc/5PPY-9HRJ>].

34. See *Fraser v. BATFE*, 672 F. Supp. 3d 118, 137 n.20 (E.D. Va. 2023) (“The Court is staffed by lawyers who are neither trained nor experienced in making the nuanced historical analyses called for by *Bruen*. There is a reason that historians attend years of demanding schooling and that their scholarship undergoes a rigorous peer-review process before publication.”); *United States v. Bullock*, No. 3:18-CR-165-CWR-FKB, 2022 U.S. Dist. LEXIS 203513, at *2–3 (S.D. Miss. Oct. 27, 2022) (“This Court is not a trained historian The sifting of evidence that judges perform is different than the sifting of sources and methodologies that historians perform Yet we are now expected to play historian in the name of constitutional adjudication.”).

35. Richard W. Stewart, *The London Gunmakers and the Ordnance Office, 1590-1637*, 55 AM. SOC’Y OF ARMS COLLECTORS BULL. 21, 23 (1986) (highlighting an English law from the early 1600s that included a proving requirement).

manufactured for its citizenry.³⁶ In 1572, the Parliament considered a bill that proposed all weapons be tested and branded with proof marks to show they had been tested.³⁷ The proponents of the bill sought to "insure high quality weapons for her Majesty."³⁸ Although Parliament did not enact the bill, efforts to regulate the manufacture of firearms continued.³⁹ In 1581, British gunmakers petitioned the Privy Council of Elizabeth I for a royal charter to ensure "the true making and repairing of calivers, muskets, dags (pistols), and other small guns and pieces."⁴⁰ In 1600, the Privy Council again raised the problem of quality control with weapons and sought assistance from London to resolve the issue.⁴¹ As the Privy Council explained, the lack of effective quality control for weapons was threatening public safety and military preparedness.⁴²

In 1637, King Charles I finally acted to resolve these issues and granted the London Proof House a royal charter.⁴³ The 1637 Royal charter empowered the proof house to set safety and quality standards for firearms.⁴⁴ The 1637 Royal charter sets forth the purpose of establishing the proving house:

*That now divers Blacksmiths and others inexpert in the art of Gunmaking have taken upon them to make try and prove Guns after their unskillful way whereby the said Petitioners are not only much damnified in their particular trade and livelyhood, but much harm and danger through such unskillfulness in that mistery hath happened to sundry of our Loyal Subjects*⁴⁵

36. *Id.* ("The problem of quality control remained a governmental rather than craft responsibility.")

37. *Id.* ("In 1572, a bill had been discussed in Parliament . . . [which] proposed that all weapons be tested . . . and marked with a special stamp as a proof mark.")

38. *Id.*

39. *Id.*

40. *Id.* at 21.

41. *Id.* at 24.

42. *Id.*

43. *Id.* at 21 ("[T]heir charter was finally approved in 1637[.]").

44. *See id.* at 25 ("[T]he arrangement benefited the government because it provided the security of a guaranteed and expandable production base for weapons of a standard type and quality . . . Standards could be maintained, weapons proofed systematically, proof marks established for better accountability . . . and enforcement powers vested in a recognized organization.")

45. Garnet J. Wolseley, *The Charter of the Company of Gunmakers London*, 6 J. SOC'Y FOR ARMY HIST. RSCH. 79, 79–80 (1927) (emphasis in original).

The 1637 Royal charter conferred broad powers to the London Proof House, authorizing it to search out and prove “all such Handguns[,] Daggs[,] or Pistols or parts of them” that were either manufactured in or imported into London.⁴⁶ In this way, the London Proof House controlled not only the manufacturing of firearms in London, but also the importation of foreign firearms into the city. The 1637 Royal Charter required all gunmakers in London “to be subject and obedient unto all such lawful and reasonable Orders and Ordinances as shall be made and sett [sic] down” by the Proof House.⁴⁷ In 1672, a second charter granted even greater power to the London Proof House, authorizing it “to enforce the proving of all arms then in use in England.”⁴⁸

Other European countries founded government-sponsored proof houses in the seventeenth century. In 1672, the Belgian government published an ordinance requiring that all firearms offered for sale be submitted for proof tests.⁴⁹ Similar to the 1637 Royal charter in England, the 1672 Belgian ordinance sought to address the royal government’s concerns “that certain defects exist in arms fabricated in this his City, his said Highness, desiring both to advance the welfare of (his) commerce and to provide adequate safeguard to purchasers.”⁵⁰ The 1672 Belgian ordinance required all sellers of firearms “both those imported from without and those forged in said City” to bring all barrels of firearms to be proved.⁵¹ The ordinance also imposed a five cent tax on each “musket, gun, or musketoon-barrel” proved, and a 1.25 cent tax “for each pistol barrel.”⁵²

B. EARLY AMERICAN PROVING LAWS AND REGULATIONS

America continued this tradition of firearms regulation through proving laws and standards into the eighteenth century. Prior to the Nation’s founding, “colonial governments substantially controlled the firearms trade. The government provided

46. *Id.* at 88.

47. *Id.* at 89.

48. *Goddard I*, *supra* note 10, at 140.

49. Calvin Goddard, *Proof Tests and Proof Marks: V: Practices in the U. S. Military Service*, 15 ARMY ORDNANCE, 32, 32 (1934) [hereinafter *Goddard V*].

50. *Id.*

51. *Id.*

52. *Id.*

and stored guns, controlled the conditions of trade, and financially supported private firearms manufacturers."⁵³

During the Revolutionary War, colonial "Councils of Safety" or "Committees of Safety"—which helped manage the War effort—required that muskets meet certain manufacturing and proving standards prior to their purchase.⁵⁴

In 1775, the New Hampshire House of Representatives passed a resolution requiring that each firearm sold to the colony possess certain specifications and pass an inspection involving the safe firing of the gun:

That for every good firearm Manufactured in this Colony, made after the following manner (viz) a Barrel three feet nine Inches long, to carry an ounce ball, a good Bayonet, with blade Eighteen inches long, Iron ramrod with a Spring to retain the Same, the maker's name Engraved on the Lock... the owner of Such firearms, receive Three pounds for Each... after having Tried said gun in the Presence of the said receiver General with four Inches & a half of Powder well wadded, at the owner's own Risk . . .⁵⁵

In 1776, New Jersey passed an "Act For The Inspection Of Gunpowder," the preamble of which stated that the "vending of damaged or bad Gun-Powder within this State, especially in a Time of War, may be of the most dangerous Consequence."⁵⁶ The act required the inspection of gunpowder prior to its sale.⁵⁷ The act also appointed state inspectors and directed them to "mark" lots that passed inspection.⁵⁸ In 1780, General George Washington ordered the Continental Army to ensure that all arms be "sufficiently proved" in order to avoid the purchase of guns of poor or unsafe quality.⁵⁹

53. *Teixeira v. Cty. of Alameda*, 873 F.3d 670, 685 (9th Cir. 2017).

54. *See, e.g.*, Resolution of the Maryland Council of Safety (Aug. 29, 1775, Archives of Maryland, 11:75) (Approving purchase of muskets with detailed manufacturing specifications and requiring that they be "proved" prior to their purchase); Resolutions of the Pennsylvania Committee On Safety (Oct. 27, 1775, Col. Rec. Penn. 10:383) (Requiring that all muskets be "proved" prior to their purchase); Apr. 4, 1776, Min. Sup. Penn., 10:535 (Approving "musketball" purchase "to prove the Firelocks making by him for the use of this province").

55. *See 8 Documents and Records Relating to the State of New Hampshire During the Period of the American Revolution, from 1776-1783* at 15–16 (Nathaniel Bouton ed. 1874) (Jan 12. 1775).

56. 1776–1777 N.J. Laws 6, ch. 6.

57. *Id.* at § 1.

58. *Id.* at §§ 2–3.

59. *See* Writings of George Washington (Letter to Henry Knox dated November 30, 1780) at 20:423–4 ("I think it will be best for you to give orders to

Following the Revolutionary War, states passed laws to ensure the safety of firearms and gunpowder for sale. In 1795, Pennsylvania passed “An Act Providing for the Inspection of Gun-Powder,” whose preamble identified the risks of gunpowder “found to vary much in its strength” and to possess “defects.”⁶⁰ Among other safety precautions, the act appointed state gunpowder inspectors and set mandatory standards for the composition and strength of gunpowder to be sold within the state.⁶¹

II. MASSACHUSETTS PROVING LAW

A. TEXT OF THE LAW

In 1805, Massachusetts passed “An Act to Provide for the Proof of Fire Arms Manufactured Within this Commonwealth.” The 1805 Law’s preamble specified the purpose of the law:

*Whereas no provision hath been made by law for the proof of Fire Arms manufactured in this Commonwealth, by it is apprehended that many may be introduced into use which are unsafe and thereby the lives of the Citizens be exposed, to prevent which . . .*⁶²

Two central purposes come through the preamble: preventing the distribution of “unsafe” firearms and protecting the “lives of the Citizens” of Massachusetts. To advance these goals, the Act required the appointment of inspectors to ensure that all muskets and pistols met certain standards prior to their sale, including that they be “sufficiently ground bored and breeched.”⁶³ Among other things, the 1805 Law required that each firearm undergo testing to show that it could carry a shot over a certain distance and “shall in no respect fail.”⁶⁴

the Officer superintending the Laboratory to have the Barrels sufficiently proved before they are delivered to Mr. Buel, as I suspect that they are most of them of the trash kind which Mr. Lee charges Mr. Deane[’s] Agent with purchasing.”).

60. 1794 Pa. Laws 764, ch. 337.

61. *Id.* at §§ 1-3. Rhode Island and New Hampshire also passed laws requiring that before gunpowder could be sold, it needed to pass state inspection or adhere to certain specifications. *See* 1776 R.I. Pub. Laws 25 (Oct. Sess.) (“An Act for the Inspection of Gunpowder Manufactured within this State”); 1820 N.H. Laws 274, ch. 25 (“An Act to Provide for the appointment of Inspectors and regulating the manufacture of gunpowder”).

62. 1804 Mass. Acts 111, ch. 81 Preamble (emphasis in original).

63. *Id.* at § 1.

64. *Id.*

The 1805 law also required proof marks be stamped upon the barrels of the weapons once they had passed the proof test.⁶⁵ The proof mark had to be placed in a specific location on the weapon and had to include specific details on when the weapon was proved and who proved the weapon:

[I]t shall be the duty of the said prover to stamp the same on the upper side and within one and an half inches of the breech of said barrels with a stamp consisting of the initial letters of the provers name & over those letters the letter P. also in the line of the said initial letters and further up said barrel the figures designating the Year of our Lord in which the proof is made and over the said figures the letter M. which said letters and figures shall be so deeply impressed on said barrel as that the same cannot be erased or disfigured⁶⁶

The 1805 law act provided that anyone who knowingly sold firearms that did not meet the state's regulatory standards could be fined.⁶⁷ Finally, the 1805 law made it a crime to "falsely forge or alter the stamp of any prover of Fire arms."⁶⁸

In 1809, Massachusetts passed "An Act Providing for the Appointment of Inspectors, and Regulating the Manufactory of Gun-Powder" ("1809 Act").⁶⁹ The 1809 Act was similar to the 1805 Act, except that it focused on the regulation of gunpowder, rather than gun barrels. The 1809 Act authorized the governor to "appoint an Inspector of gun-powder for every publick [sic] powder magazine, and every manufactory of gun-powder in this Commonwealth" ⁷⁰ The inspector was responsible for ensuring that all manufactured gunpowder contained specified quantities and qualities of materials and could safely throw a twelve-pound shot at least seventy-five yards.⁷¹ Under this Act, state inspectors examined each cask of gunpowder and marked it as having passed or failed inspection.⁷²

From 1810 to 1814, Massachusetts passed a series of additional firearm and gunpowder proving laws.⁷³ During this time,

65. *Id.*

66. *Id.*

67. *Id.* at §§ 2-3.

68. *Id.* at § 4.

69. Act of March 1, 1809, ch. 52, 1808 Mass. Acts 444 (1809).

70. *Id.* at § 1.

71. *Id.* at § 4.

72. *Id.* at § 5.

73. See 1809 Mass. Acts 205, ch. 118 (establishing fines if manufacturers moved gunpowder prior to inspection); 1810 Mass. Acts 303, ch. 72 (providing that the state should furnish a howitzer to all gunpowder inspectors to assist

the Massachusetts legislature also authorized the purchase of a large number of firearms.⁷⁴ In 1813 and 1814, Massachusetts appropriated \$1.2 million for defense of the state from invasion, a real threat given the outbreak of the War of 1812.⁷⁵ Using some of these funds, Massachusetts purchased 2,178 muskets “from gunmakers within the state.”⁷⁶ All of these muskets would need to meet the proving standards of the 1805 law.⁷⁷

B. USE OF THE LAW: FIREARM PROVERS IN MASSACHUSETTS

The Massachusetts proving laws did not simply sit on the books. Rather, historical records show that the Governor of Massachusetts exercised the powers under these acts to appoint provers of firearms and inspectors of gunpowder in counties across the Commonwealth.⁷⁸

Starting in 1805, individuals were appointed as provers of firearms or inspectors of firearms in counties across Massachusetts.⁷⁹ Below is a list compiling provers and inspectors of firearms in Massachusetts that can be readily identified in available historical records. Most of the individuals listed below were “gunsmiths residing in the several counties.”⁸⁰ Some were the leading firearms manufacturers of the day, manufacturing and selling thousands of weapons.

In 1805, James Bliss of Springfield, MA served as the prover of firearms for Hampden County.⁸¹ In 1815, Peter Crane of

them in performing their duties); 1814 Mass. Laws 464, ch. 192 (updating the state standards that all muskets and pistols were required to meet prior to manufacture or sale).

74. 2 GEORGE D. MOLLER, *AMERICAN MILITARY SHOULDER ARMS* 218–19 (2011).

75. *Id.* See generally DONALD HICKEY, *THE WAR OF 1812: A FORGOTTEN CONFLICT* 267–70 (2012) (discussing the role of the Massachusetts militia in the War of 1812).

76. MOLLER, *supra* note 75.

77. *Id.* at 219. The 1805 Act remained in effect until its repeal in 1881. In 1911, Massachusetts passed “An Act Relative to Firearms,” which regulated the sale of firearms and created a licensing regime that remains in effect through present day. See 1911 Mass. Acts 495.

78. See generally JAMES BISER WHISKER, *ARMS MAKERS OF MASSACHUSETTS 1610–1900* at 27, 227–30 (2012).

79. John D. Hamilton, *Arms Makers in the Pioneer Valley*, 94 AM. SOC’Y OF ARMS COLLECTORS BULL. 17, 25 (2006).

80. *Id.*

81. *Id.* at 25. See also WHISKER, *supra* note 78.

Canton, MA served as "Prover of Firearms" for Norfolk County.⁸² Crane was a gunsmith who had served as a major in the Massachusetts Twenty-fourth Regiment in the Revolutionary War.⁸³ In 1815, Josiah Howe of Shrewsbury, MA was listed as inspector of firearms for Worcester County and Seth James of Pittsfield was listed as inspector of firearms for Berkshire County.⁸⁴ Roswell Field of Leverett served as inspector of firearms for Franklin County in 1815, 1820, 1836, 1837, and 1841.⁸⁵

Luke Harrington of Millbury served as prover of firearms for Worcester County in the 1820s.⁸⁶ Harrington worked with Asa Waters to operate a firearms factory in Millbury.⁸⁷ The Waters family had been manufacturing firearms since the Revolution and "played a major role in the arms trade" in the United States in the mid-nineteenth century, selling firearms via government contracts to state militias and the federal government.⁸⁸ Today, there are multiple examples online of weapons bearing the proof mark of Luke Harrington, a proof mark that precisely conforms with the requirements of the 1805 Massachusetts law: the prover's initial ("LH"), the year of proving (1827), a "P." for "proved" and a "M" for "Massachusetts."⁸⁹

82. WILLIAM BURDICK, *THE MASSACHUSETTS MANUAL OR POLITICAL AND HISTORICAL REGISTER, FOR THE POLITICAL YEAR FROM JUNE 1814 TO JUNE 1815* at 137 (1814).

83. DANIEL T.V. HUNTOON, *HISTORY OF THE TOWN OF CANTON* 417 (1893); CHARLES CAPPER, MARGARET FULLER: *AN AMERICAN ROMANTIC LIFE* 16 (1994).

84. BURDICK, *supra* note 82, at 137.

85. *Id.*; JAMES LORING, *THE MASSACHUSETTS REGISTER AND UNITED STATES CALENDAR FOR 1820* at 73 (1820) [hereinafter *Loring 1820*]; JAMES LORING, *THE MASSACHUSETTS REGISTER AND UNITED STATES CALENDAR FOR 1836* at 69 (1836) [hereinafter *Loring 1836*]; JAMES LORING, *THE MASSACHUSETTS REGISTER AND UNITED STATES CALENDAR FOR 1837* at 68 (1837) [hereinafter *Loring 1837*]; JAMES LORING, *THE MASSACHUSETTS REGISTER AND UNITED STATES CALENDAR FOR 1841* at 68 (1841) [hereinafter *Loring 1841*].

86. GEORGE D. MOLLER, *MASSACHUSETTS MILITARY SHOULDER ARMS, 1784-1877* at 22 (1988); Whisker, *supra* note 78, at 100.

87. JOHN WARNER BARBER, *HISTORICAL COLLECTIONS OF EVERY TOWN IN MASSACHUSETTS* 586-87 (1839).

88. John R. Ewing, *Asa Holman Waters and the 1842 Musket*, 81 *AM. SOC'Y OF ARMS COLLECTORS BULL.* 43, 43-44 (1999); Whisker, *supra* note 78, at 229-30.

89. BONHAMS CARS, *supra* note 21; *Incredible Attic Untouched Flintlock Militia Musket*, DAVE TAYLOR'S CIVIL WAR ANTIQUES, <https://civilwarantique.com/15-03> [https://perma.cc/PZ63-RCXW] (noting Massachusetts proof mark from Luke Harrington, "state barrel prover" for Worcester County).

Figure 3: Massachusetts Proof Mark.⁹⁰

In 1837, Thomas Warner of Springfield served as the prover of firearms for Hampden County.⁹¹ That same year, Warner was appointed master armorer for the Springfield Armory by the Secretary of War.⁹² In this role, Warner was able “to obtain uniformity in a gun at a level that was up to that time unseen through the use of new machines and by introducing careful inspections between operations.”⁹³ Warner is one of the most important figures of the early American firearms industry, responsible for many technological and logistical advancements that allowed the industry to flourish in New England.⁹⁴ Warner developed new milling techniques that led to greater uniformity in the weapons produced and is credited as one of the leading innovators in the development of interchangeable parts for firearms.⁹⁵ As one historian writes, Warner was a member “of what might well be called a school of inventors and gifted master

90. BONHAMS CARS, *supra* note 21.

91. Loring 1837, *supra* note 85, at 71.

92. Whisker, *supra* note 78, at 228.

93. Robert C. Ford & Keenan D. Yoho, *The Government’s Role in Creating an Innovation Ecosystem: the Springfield Armory as Hub in the Connecticut River Valley*, 26 J. MGMT. HIST. 557, 569 (2020).

94. *Id.*

95. *Id.* See also Michael S. Raber, *Conservative Innovators, Military Small Arms, and Industrial History at Springfield Armory, 1794-1918*, 14 J. SOC’Y FOR INDUS. ARCHEOLOGY 1, 10 (1988).

mechanics," with Warner acting as the proverbial teacher for "[m]any of the future leaders of the machine tool industry."⁹⁶

In 1841, Cyrus B. Allen of Springfield also served as prover of firearms for Hampden County.⁹⁷ Allen ran a firearms shop in Springfield at this time, where he employed eighteen men and sold and manufactured pistols and rifles "warranted to be equal in workmanship and for accurate shooting, to any in the United States."⁹⁸

In 1836 and 1845, Remember Carpenter of Attleboro, MA served as inspector of firearms for Bristol County.⁹⁹ In 1837 and 1841, Joel Richardson served as the prover of firearms for Essex County.¹⁰⁰ In 1841 and 1845, Alpheus Clark of Sherburne, MA served as prover of firearms for Middlesex County.¹⁰¹

In 1841, Ethan Allen of Grafton served as prover of firearms for Worcester County.¹⁰² Allen ran a firearms shop that manufactured "inexpensive shotguns, cheap handguns, and pepper-boxes."¹⁰³ Allen invented a wide range of firearms and was issued patents for his inventions.¹⁰⁴ According to a modern firearms collector, "[n]o American gunmaker of his time manufactured a more diverse line of firearms" than Allen.¹⁰⁵ In 1841 and 1845, Francis Clark of Sturbridge served as prover of firearms for Worcester County.¹⁰⁶ Clark was a "celebrated gunsmith" who held several firearms patents.¹⁰⁷

As shown above, the individuals who served as provers of firearms throughout Massachusetts were some of the leading experts and innovators in the early American firearms industry.

96. FELICIA JOHNSON DEYRUP, *ARMS MAKERS OF THE CONNECTICUT VALLEY* 149 (1948).

97. *Loring 1841*, *supra* note 85, at 71.

98. *Whisker*, *supra* note 78, at 6.

99. *Loring 1836*, *supra* note 85, at 59; JAMES LORING, *THE MASSACHUSETTS REGISTER AND UNITED STATES CALENDAR FOR 1845* at 60 (1845) [hereinafter *Loring 1845*].

100. *Loring 1837*, *supra* note 85, at 48.

101. *Loring 1841*, *supra* note 85, at 80; *Loring 1845*, *supra* note 99, at 83.

102. *Loring 1841*, *supra* note 85, at 93.

103. *Whisker*, *supra* note 78, at 5.

104. Harold Mouillesseaux, *Early Allen Firearms*, 26 *AM. SOC'Y OF ARMS COLLECTORS BULL.* 2, 5 (1972) ("Allen's twenty-eight U.S. patents, including the reissues, attests to an active mind and an intense concentration on business.")

105. *Id.* at 2–3.

106. *Loring 1841*, *supra* note 85, at 93; *Loring 1845*, *supra* note 99, at 99.

107. *Whisker*, *supra* note 78, at 47.

While they were creating new firearms designs and models, they were also serving the state as public officials, ensuring that the firearms manufactured in Massachusetts met the government's safety standards.

C. SPRINGFIELD ARMORY EXCEPTION TO THE LAW: HOW AND WHY

The 1805 law includes an exception applicable to the Springfield Armory. Section Two states that any person who manufactures “within this Commonwealth any musket or pistol without having the barrels proved and stamped as aforesaid” would face a penalty of ten dollars for each firearm.¹⁰⁸ However, Section Two exempts from such penalty any firearms that “are or may be Manufactured in the Armory of the United States, or in fulfilment of some contract made and entered into or that may hereafter be made and entered into for the Manufacturing of fire arms for the United States.”¹⁰⁹

Litigants challenging gun laws, and at least one court, have invoked Section Two's exception to argue that the 1805 law is not comparable to modern commercial safety restrictions on the sale and manufacture of firearms.¹¹⁰ These arguments have failed to sufficiently inquire as to *why* the 1805 law included this exception. The 1805 law did not include this exception because the Massachusetts legislature was concerned with an alleged burden on Second Amendment rights of its citizenry. Instead, the 1805 law included this exception to respect an entirely separate constitutional provision: the Supremacy Clause.¹¹¹

The Springfield Armory was the first national armory of the United States.¹¹² During the Revolutionary War, Springfield was

108. 1804 Mass. Acts 111, ch. 81 § 2.

109. *Id.*

110. See *Renna v. Bonta*, No. 20-cv-2190-DMS-DEB, 2023 U.S. Dist. LEXIS 57686, at *35 (S.D. Cal. Mar. 31, 2023); Brief for Appellee at 40, *Boland v. Bonta*, No. 23-55276 (9th Cir. May 26, 2023); Brief of Amici Curiae Law Enforcement Groups and Firearms Rights Groups at 12, *Boland v. Bonta*, No. 23-55276 (9th Cir. June 2, 2023).

111. *Commonwealth v. Clary*, 8 Mass. 72, 76 (1811); see also *McCullough v. Maryland*, 17 U.S. (4 Wheat.) 316, 406 (1819) (“The government of the United States, then, though limited in its powers, is supreme; and its laws, when made in pursuance of the constitution, form the supreme law of the land.”).

112. *Springfield Armony: History & Culture*, NAT'L PARK SERV. (July 22, 2020), <https://www.nps.gov/spar/learn/historyculture/index.htm> [<https://perma.cc/3527-YT93>].

the site of one of the main weapons arsenals for the country, with weapons and gunpowder being produced, developed, and stored there.¹¹³ After the war, Congress created the Springfield Armory at the same site in 1794.¹¹⁴ The Armory operated under the supervision of the War Department and served as a vital source of domestically manufactured firearms for the federal government.¹¹⁵ By 1805, the Armory had begun manufacturing its own weapons, and it would remain one of the main suppliers of military arms for the federal government throughout the nineteenth century.¹¹⁶

The Massachusetts legislature and courts recognized the federal government's unique control over the Armory.¹¹⁷ Indeed, a case from the Supreme Judicial Court of Massachusetts decided shortly after the enactment of the 1805 law demonstrates the true motivation behind Section Two's exception.¹¹⁸

In *Commonwealth v. Clary*, the defendant was convicted of selling rum without a state license.¹¹⁹ The defendant had sold rum in a dwelling house on the grounds of the Armory, with the permission of the superintendent of the Armory.¹²⁰ On appeal, the defense argued that the laws of Massachusetts "had no operation" for actions he took at the Armory because "the offence charged was committed within a territory over which the laws of the United States had exclusive jurisdiction."¹²¹

The Supreme Judicial Court agreed with the defendant and reversed his conviction.¹²² According to the court, a person could not be punished in Massachusetts state court under Massachusetts law for actions taken on the grounds of the Armory: "No offences committed with that territory, are committed against the laws of this commonwealth; nor can such offences be

113. *Id.*

114. *Id.*

115. *Id.*; see also *Survey of Historic Sites and Buildings: Springfield Armory National Historic Site*, NAT'L PARK SERV. (Aug. 29, 2005), https://www.nps.gov/parkhistory/online_books/founders/sitea17.htm [<https://perma.cc/WAT9-QAVT>].

116. DEYRUP, *supra* note 96, at 37.

117. *Commonwealth v. Clary*, 8 Mass. 72, 76 (1811).

118. *Id.*

119. *Id.*

120. *Id.*

121. *Id.*

122. *Id.*

punishable by the courts of the commonwealth, unless the congress of the United States should give to the said courts jurisdiction thereof.”¹²³ The court invoked the important federal policy goals that justified its decision, explaining that “it might be very inconvenient to the United States to have their laborers, artificers, officers, and other persons employed in their service, subjected to the services required by the commonwealth of the inhabitants of the several towns.”¹²⁴

The Supreme Judicial Court’s decision in *Clary* reflects the contemporaneous battle in early nineteenth century America between state and federal power. Just a few years later, the U.S. Supreme Court would issue its seminal decision in *McCullough v. Maryland*, which would affirm the same principle as *Clary*: “the States have no power . . . to retard, impede, burden, or in any manner control, the operations of the constitutional laws enacted by Congress.”¹²⁵

Another practical reality that should not be overlooked: the Springfield Armory had proving standards and stamped all service weapons manufactured at the Armory with proof marks.¹²⁶ As early as 1799, the Springfield Armory was producing muskets that bore Springfield Armory proof marks.¹²⁷ As discussed above, Thomas Warner concurrently served as the prover of firearms for Hampden County in Massachusetts and as master armorer at the Armory.¹²⁸ The Armory used a series of unique proof marks throughout its history:

123. *Id.* at 77.

124. *Id.*





















125. 17 U.S. (4 Wheat.) 316, 436 (1819).

126. BLAIR ET AL., *supra* note 9, at 474 (“In America, the National Arsenal at Springfield had an excellent proof house, but dealt only with service arms.”).

127. *Goddard V*, *supra* note 49, at 32.

128. *See supra* notes 91–97 and accompanying text.

Figure 4: Proof Marks Used At United States Government Armories, Springfield, Harper's Ferry, and Rock Island, 1799 to 1934.¹²⁹

1799 VPL	1824   	1862 V P 
1802 VF	1830   	1869  u.s.
1803 P V	1837   	1878 P 
1806 P  V	1841 V P 	1903 P 
1819   V	1857 V P 	1934 P  

The Massachusetts legislature included this exception not because it was concerned with encroaching on alleged individual Second Amendment rights, but because it was concerned with encroaching on the federal government's power to prepare for the common defense of the nation.¹³⁰ That is the "why" motivating the 1805 law's exception.

III. PROVING LAWS AS HISTORICAL ANALOGUES

The 1805 Massachusetts law can serve as a historical analogue in support of several different types of modern gun violence prevention laws. First, the 1805 law's testing standards are relevantly similar to modern safety standards for specific firearms, including Massachusetts' regulations on handguns and California's Unsafe Handgun Act. Second, the 1805 law's proof mark requirement is relevantly similar to modern serialization and ghost gun laws.

129. *Goddard V*, *supra* note 49, at 33.

130. *Commonwealth v. Clary*, 8 Mass. 72, 76 (1811); *see also McCullough*, 17 U.S. at 407 ("The sword and the purse, all the external relations, and no inconsiderable portion of the industry of the nation, are entrusted to [the federal] government.").

A. SAFETY STANDARDS AND TESTING REQUIREMENTS

The 1805 law is relevantly similar to modern safety standards for particular types of weapons, including Massachusetts' handgun roster and California's Unsafe Handgun Act.¹³¹ Indeed, although *Bruen* does not require a “historical twin,”¹³² the 1805 Massachusetts law is nearly identical to these modern safety standards.

Massachusetts law requires that handguns sold in the state meet specific safety standards.¹³³ For example, handguns must possess certain melting point, strength, and density requirements and must not be “prone to accidental discharge.”¹³⁴ California's Unsafe Handgun Act (“UHA”) similarly requires certain safety features to be included in any handguns sold in the state.¹³⁵

The 1805 Massachusetts law and these modern handgun laws were enacted to protect gun owners and the general public by ensuring that no firearms are sold that have qualities that would make them unusually dangerous or, for that matter, unable to function properly for the Second Amendment's core purpose of self-defense.

Both Massachusetts' and California's handgun laws have faced Second Amendment challenges after *Bruen*. In California, lawsuits challenging the UHA are now before the Ninth Circuit after lower courts found portions of the law unconstitutional.¹³⁶ For example, in *Renna v. Bonta*, the U.S. District Court for the Southern District of California found that the 1805 Massachusetts law was not sufficiently similar to the challenged provisions of the UHA.¹³⁷ The court held that the way in which the 1805 law operated—the “how” under the *Bruen* test—was too different from the UHA.¹³⁸ The court specifically invoked the fact

131. MASS. GEN. LAWS ch. 140, § 123, cl. 18–21 (2024); CAL. PENAL CODE § 31910 (2023).

132. N.Y. State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1, 30 (2022).

133. MASS. GEN. LAWS. Ch. 140 § 123, cl. 19 (2024).

134. *Id.*

135. *Renna v. Bonta*, No. 20-cv-2190-DMS-DEB, 2023 U.S. Dist. LEXIS 57686, at *35 (S.D. Cal. Mar. 31, 2023).

136. *Id.*

137. *Id.*

138. *Id.*

that the 1805 Massachusetts law did not apply to the Springfield Armory as a key difference between the two laws.¹³⁹

As discussed above, the 1805 Massachusetts law exempted the Springfield Armory not because the Massachusetts legislature was concerned with the alleged Second Amendment implications of the law, but because the legislature did not believe it have the power to regulate the Armory.¹⁴⁰ Only five years after the law was passed, the Supreme Judicial Court made clear that the laws of the Commonwealth did not and could not apply to the Armory.¹⁴¹ The Supremacy Clause, not the Second Amendment, weighed on the minds of the Massachusetts legislature. To compare the two laws properly, future courts must keep in mind the “why” for the Springfield Armory exception.

B. SERIALIZATION REQUIREMENTS

The 1805 Massachusetts law is also relevantly similar to modern serialization requirements, including federal laws on serial numbers and recently enacted ghost gun laws.¹⁴²

In 1968, Congress passed the Gun Control Act, which remains one of the most important federal laws regulating the sale and possession of firearms.¹⁴³ One important provision of the Gun Control Act is 18 U.S.C. § 922(k), which prohibits the sale or possession of a firearm with an obliterated serial number.¹⁴⁴ Section 922(k)’s goal is “to assist law enforcement by making it possible to use the serial number of a firearm recovered in a crime to trace and identify its owner and source.”¹⁴⁵ Section 922(k) accomplishes this goal by “punish[ing] one who possesses

139. *Id.*

140. *See supra* Part II.C.

141. *Commonwealth v. Clary*, 8 Mass. 72, 77 (1811).

142. *See, e.g.*, 18 U.S.C. § 922(k) (federal prohibition on the possession of a firearm with an obliterated serial number); CAL. BUS. & PROF. CODE §§ 22949.62 (2023) (California state law prohibiting the sale of unserialized firearms); NEV. REV. STAT. ANN. § 202.3635 (2024) (Nevada state law prohibiting the manufacture of unserialized firearms).

143. *Abramski v. United States*, 573 U.S. 169, 172 (2014) (discussing how the Gun Control Act “regulate[s] sales by licensed firearms dealers, principally to prevent guns from falling into the wrong hands.”).

144. *United States v. Marzzarella*, 614 F.3d 85, 98 (3d Cir. 2010).

145. *Id.*

a firearm whose principal means of tracing origin and transfers in ownership—its serial number—has been deleted.”¹⁴⁶

The 1805 law’s proof mark requirements are “relevantly similar” to modern serialization laws, including recent laws regulating ghost guns.¹⁴⁷ The 1805 law required provers to mark the firearms after inspection and set specific requirements as to where the mark must be placed on the weapon.¹⁴⁸ The 1805 law likewise imposed financial penalties on individuals who manufactured firearms that had not been proved and did not have proof marks.¹⁴⁹

At least two courts have invoked the 1805 law to support modern serialization requirements for firearms since *Bruen*.¹⁵⁰ In *United States v. Sharkey*, the U.S. District Court for the Southern District of Iowa rejected a Second Amendment challenge to 18 U.S.C. § 922(k) and explained how the 1805 law served a sufficiently similar purpose to the challenged federal law:

Laws mandating the marking of gun barrels and gunpowder were primarily crafted with the intention of safeguarding citizens from potential explosions and providing a means to trace hazardous barrels or powder back to the original inspector who affixed the markings. Comparably, § 922(k) serves similar objectives by granting authorities the capacity to recover stolen firearms and trace those that have been implicated in criminal activities.¹⁵¹

In *United States v. Cherry*, the U.S. District Court for the Eastern District of Pennsylvania reached the same conclusion in another challenge to 18 U.S.C. § 922(k).¹⁵² The court agreed with the government that the 1805 law was analogous to 922(k) “because colonial legislatures, like Congress in 1968, were concerned about the movement of firearms between private parties and the dangers of firearms falling into the wrong hands.”¹⁵³

146. *United States v. Adams*, 305 F.3d 30, 34 (1st Cir. 2002).

147. *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 29 (2022).

148. *See supra* Part II.A.

149. *Id.*

150. *See United States v. Sharkey*, No. 4:22-cr-00176-SMR-HCA-1, 2023 U.S. Dist. LEXIS 168882 (S.D. Iowa Sep. 20, 2023); *United States v. Cherry*, No. 19-122-1, 2024 U.S. Dist. LEXIS 12315 (E.D. Pa. Jan. 24, 2024).

151. *Sharkey*, 2023 U.S. Dist. LEXIS 168882, at *8.

152. *Cherry*, 2024 U.S. Dist. LEXIS 12315, at *16.

153. *Id.*; *see also United States v. Alberts*, No. CR 23-131-BLG-SPW, 2024 U.S. Dist. LEXIS 63131, at *13 (D. Mont. Apr. 5, 2024) (relying on 1805 Act to deny Second Amendment challenge to § 922(k)).

The 1805 law is also relevantly similar to recently enacted laws targeting ghost guns. Ghost guns are untraceable firearms available for purchase to anyone without a background check and are, unsurprisingly, incredibly popular with those who wish to commit crimes.¹⁵⁴ The federal government has adopted some rules to attempt the problem, while some states have themselves enacted comprehensive ghost gun laws.¹⁵⁵ Nearly all these regulatory efforts have faced Second Amendment challenges, with challengers arguing that the United States has a longstanding tradition of "self-manufacturing" firearms with no government oversight.¹⁵⁶

The 1805 law rebuts this narrative, showing that commercial safety regulations have been a part of the manufacturing of firearms since this country's founding and before. The gunsmiths of early nineteenth century America "were not exponents of an 'American tradition of self-made arms' or the forbears of today's amateurs with gun kits trying to evade state regulation. They were professionals or professionals-in-training, working in an industry intimately connected to the state."¹⁵⁷ In Massachusetts, leading firearm manufacturers, including some of the biggest technological innovators in the firearms industry at the time, worked with the government to adopt and enforce safety standards.¹⁵⁸

154. Dave Pucino, *Ghost Guns: How Untraceable Firearms Threaten Public Safety*, GIFFORDS L. CTR. 2 (May 21, 2020), <https://giffords.org/report/ghost-guns-how-untraceable-firearms-threaten-public-safety> [<https://perma.cc/3U5Z-GMWB>].

155. See generally *Hardware & Ammunition: Ghost Guns*, GIFFORDS L. CTR. (2024), <https://giffords.org/lawcenter/gun-laws/policy-areas/hardware-ammunition/ghost-guns/> [<https://perma.cc/FB6T-ZSFK>] (collecting and analyzing federal and state laws on ghost guns).

156. See, e.g., *New York v. Arm or Ally, LLC*, No. 22-CV-6124 (JMF), 2024 U.S. Dist. LEXIS 31322, at *49 (S.D.N.Y. Feb. 23, 2024) (rejecting ghost gun manufacturers' argument that application of state firearms laws violated their alleged Second Amendment rights); *Rigby v. Jennings*, 630 F. Supp. 3d 602, 608 (D. Del. 2022) (granting in part and denying in part a preliminary injunction in challenge to Delaware's ghost gun law).

157. Brian DeLay, *The Myth of Continuity in American Gun Culture*, 113 CALIF. L. REV. (forthcoming 2025).

158. See *supra* Part II.B.

CONCLUSION

Massachusetts' 1805 firearms proving law is an important historical example of the regulation of the sale and manufacturing of firearms in the United States. The law carried on a longstanding tradition of government mandated firearms proving from seventeenth century Europe, and was adopted and enforced by some of the leading firearms manufacturers of early nineteenth century America. Courts evaluating Second Amendment challenges in the wake of *NYSRPA v. Bruen* should look to the 1805 law as a historical analogue for a range of modern gun violence prevention measures, including laws requiring serial numbers on firearms, laws regulating ghost guns, and laws setting specific safety standards for firearms.